



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE July 1, 2021

TO Members, Joint Education Interim Committee

FROM Tania Hytrek, Operations Administrator

SUBJECT Recalibration: History and Guiding Legal Principles

INTRODUCTION

The Joint Education Interim Committee's interim topics include review of the recalibration process and consideration of alternative approaches in future recalibrations. In that vein, this memo outlines the relevant statutory provisions and the Wyoming Supreme Court caselaw related the recalibration requirements of the Wyoming education resource block grant model (model). A brief history of the various recalibration efforts is also included, along with references to the legislation and reports associated with those endeavors. Several documents referenced appear as hyperlinks within this memo. If a hard copy of the document is desired, please contact the Legislative Service Office and one can be provided.

At the outset, it is important to note, Wyoming's Constitution contains several provisions related to education that guide the Wyoming Legislature's obligation in the realm of K-12 school finance and capital construction. Additionally, over the course of approximately 30 years, the Wyoming Supreme Court issued five cases directly related to Wyoming's educational system and the Legislature's duties associated with those provisions.¹ This memo is not intended to serve as a comprehensive analysis of those Constitutional provisions and the noted case law. Instead, this memo is focused directly on the legal principles associated with recalibration of the model. For a comprehensive discussion of the applicable constitutional provisions and the case law addressing K-12 school finance, please see the **June 18, 2020, Historical Review of Recalibration and Related Issues**, prepared by the Legislative Service Office for the 2020 Select Committee on School Finance Recalibration.

GUIDING LEGAL PRINCIPLES

The Legislature is required to "provide an equal opportunity for a quality education by structuring both school financing and the education system in a manner, and at a level, that maintains 'a complete and uniform system of public instruction' and a 'thorough and efficient system of public schools adequate to the proper instruction of all youth of the state.'" *Campbell I* at 1263-64. To meet its Constitutional obligations, the Court directed the Legislature define the educational package that every student is entitled to have regardless of location, determine the cost of that educational package, and then fund the cost associated

¹ Washakie – *Washakie County School District No. 1 v. Herschler*, 606 P.2d 310 (Wyo. 1980); Campbell I – *Campbell County School District v. State*, 907 P.2d 1238 (Wyo. 1995); Campbell II – *State v. Campbell County School District*, 19 P.3d 518 (Wyo. 2001); Campbell III – *State v. Campbell County School District*, 32 P.3d 325 (Wyo. 2001); Campbell IV – *Campbell County School District v. State*, 181 P.3d 43 (Wyo. 2008).

with delivery of the educational package. *Id.* at 1279-80. Recalibration efforts pertain to the second obligation identified by the Court – determining the cost of the educational package.

The Court recognized a cost-based model relying on past statewide expenditures is one option that is capable of supporting a constitutional school finance system. That said, to ensure students continue to receive a constitutionally adequate education appropriate for the times, the Court mandated the Legislature review all components of the model every five years to ensure it remains an accurate reflection of the cost. *Campbell II* at 527, 544, 550. In recognition of the Court's directive the Legislature adopted Wyoming Statute § 21-13-309(t), which provides "not less than once every five (5) years, the Legislature shall provide for the recalibration of the education resource block grant model to determine if modifications are necessary to ensure it remains cost-based in light of changing conditions and modifications to law." 2003 Wyo. Sess. Laws, Ch. 208, § 701.

In releasing jurisdiction over Wyoming's K-12 public school finance in *Campbell IV*, the Court acknowledged the Legislature's continued commitment to ensure the model remains an accurate reflection of the costs associated with the delivery of an education appropriate for the times through its recalibration efforts. *Campbell IV* at ¶ 17. The Court also provided the following guidance regarding recalibration: "[w]e agree with the district court that *Campbell II* did not dictate any particular recalibration process, but only that the individual components should be reviewed so that the model remained current. To start from scratch every five years would seem impracticable and unnecessarily costly. We think it is fair to assume that if major changes occur in the field of public education that would affect the assumptions in the model, and the state and the school districts believe such changes should be implemented in Wyoming, the model will be adjusted accordingly in the recalibration process." *Id.* at ¶ 18.

HISTORY OF RECALIBRATIONS

• 2001 RECALIBRATION & 2002 BUDGET SESSION

The Legislature undertook its first model recalibration beginning in 2001. The Joint Education Interim Committee oversaw this work and guided the effort. The recalibration was performed by Management Analysis & Planning, Inc. (MAP). MAP visited over 100 schools, located in 41 school districts, met with teachers and administrators, evaluated data, and relied on their professional judgment in making recommendations related to the cost of delivering an education in Wyoming. The effort was overseen by the Joint Education Interim Committee and continued over the course of four years, 2001 through 2004, and resulted in over 30 reports on various model components.²

As a result of these effort, the Legislature adopted modifications to the cost-based prototypical school models, including revision of employee compensation and benefits, out-of-state tuition payments, at-risk students, small schools, small school districts, transportation, and routine maintenance and operation resources. Additionally, the Legislature required continued study of the costs associated with vocational education, reading assessment and intervention, student transportation, special education, small schools, the regional cost adjustment, at-risk educational programs, and certified staff compensation. See **2002 Wyo. Sess. Laws, Ch. 66** and **2002 Wyo. Sess. Laws, Ch. 76**.

² The reports associated with the 2001 recalibration effort are too numerous to list efficiently within this memo. The effort spanned four years and individual reports were issued for each model component. A comprehensive list can be found under Reports, K-12 School Finance Studies at: <https://www.wyoleg.gov/StateFinances/SchoolFinance>

- **2005 RECALIBRATION & 2006 BUDGET SESSION**

A second recalibration of the model was performed by Lawrence O. Picus and Associates (Picus and Associates) in 2005. The Legislature established a Select Committee on School Finance to oversee this study and to sponsor necessary legislation as a result of the effort. Picus and Associates relied on an evidence-based approach in conducting the 2005 recalibration. The firm held six professional judgment panels in three locations across the state. Over 200 educators, with representation of all 48 schools, were given the opportunity to review and comment on the proposed model developed by Picus and Associates. A separate professional judgement meeting was also held to obtain input from small school representatives. Picus and Associates presented the proposed model at six interim meetings of the 2005 Select Committee on School Finance. See *An Evidence Based-Approach to Recalibrating Wyoming's Block Grant School Funding Formula, Picus and Associates, November 30, 2005*.

As a result of this effort, the Legislature incorporated model spreadsheets into law that executed recommendations contained in the 2005 cost of education study, as modified by the Legislature. The model spreadsheets generated the resources associated with the cost of delivering an education in Wyoming and included adjustments to the prototypical model for at-risk populations, alternative school resources, updated employee compensation and benefits, vocational education, special education, transportation, isolation and maintenance payments, and out-of-state tuition. See **2006 Wyo. Sess. Laws, Ch. 37**.

- **2010 RECALIBRATION & 2011 GENERAL SESSION**

The 2010 recalibration performed by Picus and Associates, overseen by the 2010 Select Committee on School Finance Recalibration, did not undertake a review of every model component in anticipation of creating a new funding model. Instead, the Legislature charged Picus and Associates with a "desk review" to revalidate the cost-basis of the components within the model. Picus and Associates reviewed how districts deployed model resources to align with educational strategies that served as the foundation of the cost-based model components. Significantly enhanced data generated by school districts and the Wyoming Department of Education informed the 2010 recalibration effort. Picus and Associates concluded resources generated by the 2010 model exceeded the cost-based levels required by the Court. The 2010 recalibration effort included a study to review the labor market conditions and the price of personnel as resourced by the 2010 model. This portion was performed by Dr. Christian Stoddard, Dr. Lori Taylor, and Mr. Neville Kenning. The focus of the study was to determine if the salaries as provided by the 2010 model were at appropriate levels to recruit and retain a high-quality workforce. See *Report to Legislature, prepared by: Select School Finance Recalibration Committee, December 2010*.

In response to the 2010 recalibration, the Legislature enacted Wyoming Statute § 21-13-309(u), which requires the Legislative Service Office to annually assemble information to monitor the cost-basis of the model. The Legislature also made several technical amendments to model resources, which included modification of the elementary principal resources, pupil support staff, additional retirement contributions, modification of the grades associated with a prototypical middle school, modification of instructional facilitator funding, and revision of the small district adjustment. See **2011 Wyo. Sess. Laws, Ch. 185**.

In addition, the Legislature enacted the Wyoming Accountability in Education Act in conjunction with the 2010 recalibration effort, which established a comprehensive system of teacher and leader accountability tied to student performance with a robust professional development and technical assistance component. See **2011 Wyo. Sess. Laws, Ch. 184**.

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- **2015 RECALIBRATION & 2016 BUDGET SESSION**

The 2015 Select Committee on School Finance Recalibration met for 12 days over the course of the interim and reviewed all model elements in conducting the 2015 recalibration. Picus Odden & Associates (formerly Picus and Associates), along with Dr. Taylor and Dr. Stoddard, assisted the Select Committee with the 2015 effort. The 2015 recalibration also included an in-depth review of salaries and the labor markets associated with the delivery of K-12 public education in Wyoming. Additionally, the Select Committee studied the regional cost adjustments, and received recommendations associated with updating this portion of the model, and reviewed the indices and process utilized in determining the necessity of an external cost adjustment. See *Report to the Legislature, prepared by: Select Committee on School Finance Recalibration, January 2016*.

The Legislature did not enact any comprehensive legislation in response to the 2015 recalibration; however, a minor modification was made related to part-time student attendance in a nonresident school district and the computation of school district revenues to exclude tuition paid by one district to another district. See *2016 Wyo. Sess. Laws, Ch. 88*.

- **2017 RECALIBRATION & 2018 BUDGET SESSION**

During the 2017 general session, the Legislature authorized another Select Committee on School Finance Recalibration. Over the course of the 2017 interim, the Select Committee undertook an additional recalibration of the model with the assistance of Augenblick, Palaich and Associates (APA). In addition to the effort to review the cost-basis of the model, APA undertook an evaluation of Wyoming's educational programs. APA also explored the possibility of alternative recalibration approaches. The effort included interviews and listening sessions with multiple Wyoming educational stakeholders, online surveys, and expert content reviews. See *Alternative Approaches to Recalibration and Reconciliation of Study Results to Provide Final Recommendations, prepared by APA, January 12, 2018*.

In response to the 2017 study, the Legislature amended Wyoming Statute § 21-9-101 to include computer science and computational thinking in the common core of knowledge and skills and removed applied technology and keyboarding. Computer science was allowed to count towards graduation requirements and satisfy either a math or science requirement under the Hathaway scholarship's success curriculum requirements. See *2018 Wyo. Sess. Laws, Ch. 123*. Additionally, the Legislature required the Wyoming Department of Education explore fiscal efficiencies in transportation costs based on APA's recommendations. See *2018 Wyo. Sess. Laws, Ch. 103*.

The Legislature also enacted several technical school finance amendments that included clarification of average daily membership and modification of the transportation, groundskeepers, and special education model components. See *2018 Wyo. Sess. Laws, Ch. 137*.

- **2020 RECALIBRATION & 2021 GENERAL SESSION**

The 2020 recalibration was performed by Picus Odden & Associates and overseen by the 2020 Select Committee on School Finance Recalibration authorized by the Legislature. The study was a continuation of the 2005, 2010, and 2015 recalibrations performed by the same group of consultants. The effort acknowledged the challenges facing Wyoming, including the COVID-19 pandemic and the forecasted decline in revenues. Picus Odden & Associates held 18 professional judgment panels, with a total of 148 participants, across Wyoming. In addition to current model components, the consultants studied funding associated with pre-kindergarten programs, school safety, transportation, food services, and special education; their efforts also included case studies of ten Wyoming schools with high student performance or schools with substantial improvement in student performance over the last three to five years. The Select

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Committee also received the monitoring reports in accordance with Wyoming Statute § 21-13-309(u). See *The 2020 Recalibration of Wyoming's Education Resource Block Grant Model*, Picus Odden & Associates, December 1, 2020.

The Legislature did not enact legislation during the 2021 session in response to the 2020 recalibration.

CONCLUSION

In closing, the initial 2001 recalibration was performed in response to the Court's directive in *Campbell II* to review the costs associated with delivering the educational package as defined by the Legislature every five years to ensure the model remains cost-based. In 2003, the Legislature codified the requirement for a recalibration of the model to be performed not less than once every five years. Pursuant to this requirement, the Legislature has undertaken five additional recalibrations. It is within the Legislature's prerogative to recalibrate more frequently, as it has chosen to do so over the course of the last six years. The Legislature has historically utilized expert consultants to undertake this work. Notably, the Court relied extensively on expert testimony in releasing jurisdiction over Wyoming's K-12 public school finance in 2008. That said, the Court did not dictate a specific process to follow in recalibration of the model.

Should you have further questions or need any additional details regarding this information, please advise.